

Notice of Allowability

Application No.

10/080,118

Examiner

LIEN TM NGO

Applicant(s)

BAUER ET AL.

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers files 8/6/04.
2. ☒ The allowed claim(s) is/are 1-4,6-9,11-19,21-24 and 26-30.
3. ☒ The drawings filed on 6/13/02 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

LIEN M. NGO
PRIMARY EXAMINER



DETAILED ACTION

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In claim 26, line 1, "claim 25" has been changed to -- claim 24 --.

2. Claims 1 and 16 are generic and allowable. Accordingly, the restriction requirement as to the encompassed species is hereby withdrawn and claims 7, 14, 15, 22 and 29 directed to the species of claims non-elected invention no longer withdrawn from consideration since all of the claims to this species depend from or otherwise include each of the limitations of an allowed generic claim.

In view of the above noted withdrawal of the restriction requirement as to the linked species, applicant(s) are advised that if any claim(s) depending from or including all the limitations of the allowable generic linking claim(s) be presented in a continuation or divisional application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

3. Claims 1-4, 6-9, 11-19, 21-24, 26-30 are allowed.

4. The following is an examiner's statement of reasons for allowance:

Upon reconsider to the applicant's remark filed 4/16/04 and the argument in appeal brief filed 8/6/04, examiner agrees claims 1-4, 6-9, 11-19, 21-24, 26-30 allowed because the applied art of record, Uchiyama (Pub. US 2003/42257) and Su (4,770,305), either alone or combination, fails to disclose a cap member for use on a bottle having a sealed member placed over the outlet of the bottle, the

cap having a plurality of rupture members that engages the seal upon engagement with an external probe, the shape of the plurality of rupture members will clear the seal for allowing quick and easy egress of solution from the bottle while the probe is present in the bottle, and the plurality of rupture members each having a connecting hinge that allows the rupture member to pivot approximate 90 degrees with respect to a plane parallel to the bottle outlet.

Uchiyama does not teach or suggest of providing rupture members which puncture or clear a bottle seal.

Su does not teach or suggest rupture members each having a hinge member allowing rupture members to pivot approximately 90 degrees with respect to a plane parallel to the outlet for allowing an external probe to be placed within the bottle.

The Uchiyama reference teaches away from providing a separate seal as taught and claimed by applicant. In order to combine the references there would have to be some reason to do so. Since the Uchiyama reference is directed to eliminating a seal, there would be no reason to make the modification to providing a seal and a shape of the rupture members to puncture or clear the seal. Quite the contrary, this is a teaching away of combining two references as the ' 305 reference clearly requires the providing of a separate seal. Furthermore, neither one of the references teach or suggest that the plurality rupture members having a connecting hinge that allows rupture members to pivot approximately 90 degrees

with respect to the plane of the outlet. Thus allows easy egress of the fluid while the probe is within the bottle.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO
Primary Examiner
Art Unit 3727

February 1, 2005



LIEN M. NGO
PRIMARY EXAMINER